

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE HOUSING FINANCE AGENCY

In the Matter of Sarah Johnson - Revenue
Recapture

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

This matter came on for an evidentiary hearing before Administrative Law Judge Jeanne M. Cochran on January 25, 2013 at the Office of Administrative Hearings in St. Paul, Minnesota. The hearing record closed at the conclusion of the hearing on that day.

Darryl Hennen, Assistant Attorney General, appeared on behalf of the Minnesota Housing Finance Agency (MHFA or Agency). Sarah Johnson, now known as Sarah Zastrow (Respondent), appeared on her own behalf and without legal counsel.

STATEMENT OF THE ISSUES

1. Whether Respondent is in default of the terms and conditions of a Loan Note and Mortgage endorsed and assigned to the MHFA, rendering her liable to the MHFA for the repayment of monies received?
2. Whether the MHFA is entitled to offset the amount owed by Respondent using revenue recapture in accordance with Minn. Stat. ch. 270A?

The Administrative Law Judge concludes that Respondent is in default of the Loan Note and that the Agency is entitled to offset the remaining amount owed by Respondent under the Loan Note in accordance with Minn. Stat. ch. 270A.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Douglas County Housing & Redevelopment Authority (DCHRA) is a lender approved by the MHFA to participate in the MHFA Fix-Up Fund Loan Program (Fix-Up

Program).¹ Under the Fix-Up Program, DCHRA originates mortgage loans and then assigns the loan notes and mortgages to the MHFA.²

1. On September 9, 2004, Respondent executed a Loan Note and Mortgage for a MHFA Fix-Up Fund Loan (Loan).³ The original principal amount of the Loan was \$10,700. The Mortgage was filed with the Douglas County Recorder on September 14, 2004 as Document No. 261648.⁴

2. The funds were borrowed to renovate real property at 218 Douglas Street, Evansville, Minnesota 56326.⁵

3. DCHRA originated and disbursed the proceeds of the Loan to Respondent.⁶

4. DCHRA then endorsed and sold the Loan Note to the MHFA, and DCHRA assigned the Mortgage to the MHFA.⁷ The Assignment of the Mortgage, dated September 14, 2004, was filed with the Douglas County Recorder's Office as Document No. 26149.⁸

5. The Loan Note required Respondent to make 240 monthly payments of \$72.12 on the 6th day of each month, starting on October 6, 2004.⁹

6. The Loan Note provides that failure to make payment when due or in the full amount shall be a default.¹⁰ The Loan Note also includes a "setoff" provision that states:

If I am in default, you may take the money from any of my accounts with you to pay this agreement. For this purpose, my accounts include all accounts to which I am a party. This may be done without notifying me.¹¹

7. Respondent made monthly payments through April 6, 2012, but failed to make any further payments thereafter.¹²

8. On November 16, 2012, the MHFA provided Respondent notice in accordance with Minn. Stat. § 270A.08 that she was in default of the terms of her Loan Note and that she had an outstanding balance of \$8,116.07 as of that date. The notice stated that she was required to pay the outstanding balance immediately. The notice

¹ Ex. A.

² *Id.*

³ Exs. A and B.

⁴ Ex. B.

⁵ See Exs. A and B; Testimony of Sarah Johnson (n/k/a Sarah Zastrow).

⁶ Ex. A.

⁷ Exs. A, B, C.

⁸ Ex. C.

⁹ Ex. A.

¹⁰ *Id.*

¹¹ *Id.*

¹² Ex. E at ¶ 6; Test. of S. Johnson.

also informed her that the MHFA had taken action under the Revenue Recapture Act to request that the Department of Revenue intercept funds due to her. Finally, the notice explained her right to contest the validity of the MHFA's claim to refunds at a hearing before an Administrative Law Judge.¹³

9. On or about December 1, 2012, Respondent timely requested a contested case hearing.¹⁴

10. As of December 7, 2012, the payoff amount of the Loan was \$8,219.20.¹⁵

11. At the hearing, Respondent explained that she had not made any payments since April 2012 because she did not have the funds to do so. Respondent stated that she is the single mother of a child with special needs and drives over 90 miles each way to work. She does not have the money to pay for gas and to pay the monthly Loan payment.

12. Respondent stated that she has done the best she could. Respondent would like to try to work out another payment arrangement with the MHFA.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge (ALJ) has jurisdiction in this matter pursuant to Minn. Stat. §§ 270A.08 and 270A.09.

2. The Notice and Order of Hearing was proper, and the MHFA has fulfilled all of the relevant procedural requirements.

3. Respondent executed a Loan with DCHRA that was endorsed to, and purchased by, the MHFA. Consequently, Respondent is liable for repayment of the Loan debt to the MHFA.

4. By failing to make monthly payments after April 2012, Respondent is in default.

5. As a result, Respondent owes \$8,219.20 to the MHFA under the Loan Note.¹⁶

6. The Minnesota Revenue Recapture Act, Minnesota Statutes chapter 270A, authorizes state agencies, such as the MHFA, to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the MHFA by setting off the amount of such debt

¹³ Ex. D.

¹⁴ See Notice and Order for Hearing (December 13, 2012).

¹⁵ Ex. E at ¶ 6.

¹⁶ *Id.*

from refunds due to debtors. Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.¹⁷

7. The collection remedy provided by the Revenue Recapture Act is in addition to, and not in substitution for, any other remedy available by law.¹⁸

8. The MHFA is entitled to offset the amount it is owed by Respondent under the Loan Note (\$8,219.20) using revenue recapture under Minnesota Statutes Chapter 270A.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

1. Respondent is in default of the terms and conditions of the Loan Note and owes the MHFA \$8,219.20.

2. The MHFA is entitled to proceed to offset the amount owed by Respondent under the Loan Note (\$8,219.20) through the Minnesota Revenue Recapture Program.

Dated: February 5, 2013

s/Jeanne M. Cochran

JEANNE M. COCHRAN
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Order is the final decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

¹⁷ Minn. Stat. § 270A.03, subd. 7 (2012); Minn. Stat. § 349A.08, subd. 8 (2012).

¹⁸ Minn. Stat. § 270A.04, subd. 1 (2012).

MEMORANDUM

Respondent does not challenge the validity of the Loan Note or the remaining amount due to the MHFA on the Loan. Instead, Respondent asks for an opportunity to enter into a new payment plan because she is facing difficult financial times.

The Revenue Recapture Act, however, does not provide the ALJ with authority to restructure the payment schedule in the Loan Note.¹⁹ The ALJ's authority is limited to determining whether the MHFA has shown that Respondent has a "debt" owing to the Agency as defined in Minn. Stat. § 270A.03 and whether MHFA is entitled to offset the amount owed by Respondent using revenue recapture in accordance with Minn. Stat. ch. 270A.²⁰ Here, the MHFA made such a showing by presenting undisputed evidence that Respondent has defaulted on the Loan and has a debt owing to the MHFA of \$8,219.20.²¹ Because Respondent remains liable under a contract with the MHFA, the MHFA is authorized to pursue revenue recapture to collect the debt.

The undersigned recognizes, however, that these are difficult financial times and that Respondent faces a challenging situation. To the extent the MHFA has not already done so, the undersigned encourages the MHFA to fully explore the possibility of working out an alternative payment arrangement with Respondent.

J. M. C.

¹⁹ See Minn. Stat. ch. 270A.

²⁰ Minn. Stat. §§ 270A.07, 270A.09.

²¹ Exs. A-E.